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SUBJECT: SICHUAN PERSPECTIVES: THE APPARATCHIK, THE CONSTITUTIONAL
LAW PROFESSOR, AND THE BLOGGER

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CLASSIFIED BY: David E. Brown, Consul General, U.S. Consulate
General Chengdu, Department of State.
REASON: 1.4 (b)

[1](#)1. (C) Summary: A Sichuan People's Congress committee
chairman, a professor of constitutional law at Sichuan
University, and a Chinese blogger recently gave their differing
takes on the outlook for Chinese reform:

-- the Sichuan People's Congress committee chairman said that
strong pressure from the public, kept informed by mass media
reports of wrongdoing, as well as internal disciplinary system
reforms, ensure that the Communist Party focuses on the national
interests, and not just the interests of its members. China
still has far to go in overcoming the "officials first" imperial
tradition, but is making steady progress towards democracy and
rule by law.

-- the Professor said that the hopes of some legal scholars that
judges would be allowed to apply the PRC Constitution to
interpreting PRC law have been frustrated. A PRC judge may
consider neither precedent nor the PRC Constitution in
interpreting a law since the authority to interpret the
constitution rests exclusively with the standing committee of
the National People's Congress - itself an instrument of the
Party.

-- the Chengdu blogger wrote in a recent article that political
intimidation is part of everyday life in Sichuan; his recent
article (summarized below) is on the importance for China's
future of individuals finding the courage to speak out. End
Summary.

[1](#)I. A Sichuan People's Congress Committee Chairman

[1](#)2. (C) Luo Linshu, Chairman of the Foreign and Overseas Affairs
Commission of the Sichuan People's Congress, discussed with
ConGenOff the outlook for Chinese reform at a reception for the

opening of the Sri Lanka Consulate in Chengdu. While discussing the mechanics of legislation in Sichuan Province, Luo commented that China has far to go to rid itself of the "the officials come first" (guan benwei zhuyi) thinking inherited from thousands of years of imperial rule. China is far behind the United States in democracy, but it is making steady progress. The United States has over 200 years of history, Luo said, while only 30 years have passed since the PRC began its reform and opening policy.

13. (C) When Congenoff asked Luo how in a one party system the Communist Party could be prevented from looking after the interests of its own members rather than the national interest, Luo replied that stronger efforts by Communist Party disciplinary organs and exposure of wrongdoing by the media create strong pressure on the Party and government. ConGenOff replied that media oversight is ineffective since the propaganda department of a local communist party committee at the direction of local leaders sometimes give orders to the local media not to report certain stories. Luo said, yes, that happens, but that Chinese have a saying that if the people are deeply concerned about an issue, nothing can contain them -- the truth comes out eventually despite efforts to conceal things.

14. Comment: Luo's idea that China needs a single strong party that fosters democracy as it guides the nation in a gradual transition away from the authoritarianism of China's imperial past to democratic governance go back a long way -- Republic of China founder Sun Yat-sen propounded them in his book the "Three People's Principles" (Sanminzhuyi). Many Chinese share Sun's vision; others give lip service to it as an excuse for the Party's hold on power. Taiwan is an example of a successful transition to democracy in a Chinese society, although comparisons are difficult because the KMT neither in China nor in Taiwan ever achieved the level of totalitarian control of society that the CPC has in China.

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15. (C) Comment (Cont.): Democracy is a common word in Party discourse from Mao on down and is given many meanings including the "people's democratic dictatorship" enshrined in the PRC Constitution that westerners would not recognize. Sichuan Province, from the days of Zhao Ziyang through the spread of village elections, has long been a leader in Chinese political reform. Luo sees something like U.S.-style democracy as a long-term goal for the PRC which he sees as a very young, 30 year old political system that is undemocratic in many ways. Others disagree: for example a rural Sichuan county party secretary who rejected this idea when ConGenOff proposed it to him last year and a Sichuan Party School apparatchik (refs A and B). Many Chinese in SW China have told ConGenOff that China will eventually be a much more democratic country; Luo shares this view. This widely held expectation itself creates a force for change. End Comment.

II. Constitutional Law Professor on Limits of Constitutionalism

16. (C) Xie Weiyan, professor of constitutional law at Sichuan University and former participant in the State Department's international visitor program, cooperates with Harvard University on discrimination in employment, and with Columbia

University on public interest law. At a dinner for a Washington visitor, he discussed with ConGenOff the limits of constitutionalism in the Chinese system. Xie noted that under the PRC Constitution, the standing committee of the National People's Congress has the exclusive authority to interpret PRC law (ref C). If the NPC should decide that a law the NPC has passed is unconstitutional, the NPC can change it.

¶7. (C) In one case about a decade ago of a student who was wrongfully denied admission to higher education, a judge applied the provision of the PRC Constitution on the right to an education. This was the first time a Chinese judge had applied the PRC Constitution to interpret a PRC law. At the time, some Chinese legal experts thought of this as a Marbury vs. Madison-like breakthrough for constitutional law in China, although the decisions of Chinese judge, said Xie, do not create a precedent for later legal decisions. Xie explained that each judge interprets the law as they see fit, creating problems of consistency. The "ground-breaking" decision, it turns out, was cancelled in December 2008. Xie added that in China a judge who uses the constitution to interpret the law would be violating the PRC Constitution. Only the standing committee of the National People's Congress has the exclusive authority to interpret the PRC Constitution.

Lost Case Led to Change in

Government Policy on Enrollment of Students with Hepatitis

¶8. (C) Xie added however, that even by losing you can win sometimes. Xie said that several years ago he tried to use the Constitution's provision that everyone has a right to an education to argue that universities may not forbid students with hepatitis from attending university. Xie said he lost the case on appeal, but later the Ministry of Education changed the rule, citing his lost appeal in its reasoning for changing the regulation.

¶9. (C) Xie added that some highly respected Chinese legal scholars said recently that pushing to get the PRC Constitution to be used to interpret the law would be a serious mistake. ConGenOff speculated that this seems to mean that many Chinese legal scholars believe the PRC Constitution is outmoded since it is still based on the principle of the people's democratic dictatorship under the one party rule of the Communist Party. Xie, apparently fearing that he would be overheard, did not

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reply but nodded in agreement.

III. Blogger: Intimidation is Always There in the Background

¶10. (C) Comment: The willingness of Congenoff's contacts to speak varies widely according to the environment in which the conversation takes place. In a Chengdu restaurant last year, ConGenOff said to a Chinese acquaintance, a Party member, that there is much the PRC can learn from Taiwan's experience with democracy and rule of law. He looked around at the walls and

ceiling for a moment, and the said in a low voice, "We know, but we can't say so." Similar to this Party member's fear of openly speaking his mind, the article appended below by Chengdu blogger Ran Yunfei discusses the atmosphere of political intimidation (ref D) that imposes the conversational self-discipline that is still part of life in the PRC.

¶11. (U) In his November blog entry "Where will Far End?", Ran Yunfei compares widespread political intimidation in China to his experience many years ago of being lost in a cave with a group of other children. Some of the children told the younger ones that they should not cry, but it was just because of their crying and yelling that the children were found eventually and saved. Ran writes "If everyone speaks up, no matter how weakly, then the weak will be able to help one another. We can all light a candle in the darkness and so enlighten more people and make the fear that everyone feels recede a little ... I make an entry in my blog everyday just to continue to call to the outside ... Only living in truth enables people to improve their understanding and not be influenced by the lies and deceptions of officials ... People need to be able to live with some fear in their lives, but with regards to our political lives and our freedom, we do have the right to demand that the government create for us an environment in which we do not fear, in which we have freedom from fear."

¶12. (U) A full English-language translation of Ran Yunfei's November 4, 2009 blog entry "Where Will the Fear End? A Talk that Could Not be Delivered" is available on the Internet at URL tinyurl.com/ranyunfei-intimidation. The Chinese text is on one of Ran Yunfei's many blog hosting sites at URL tinyurl.com/ranyunfei-chinesetext.
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